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July 21, 2003

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Applications for Transfer of Control of Hispanic Broadcasting Corp., and  
Certain Subsidiaries, Licensees of KGBT AM, Harlingen, Texas *et al.*  
(Docket No. MB 02-235, FCC File Nos. BTC-20020723ABL, *et al.*)

Dear Ms. Dortch:

Spanish Broadcasting System, Inc. (“SBS”) has submitted for the record significant empirical data and analyses that unequivocally demonstrate the presence of a separate Spanish-language broadcasting market. These filings also show that, were the Commission to approve the merger between Univision and Hispanic Broadcasting Corporation (“HBC”) (collectively, “Applicants”), it would essentially be approving a merger to monopoly—for both economic and diversity purposes.<sup>1</sup>

The Applicants argue that the Commission need not concern itself with such levels of concentration, asserting instead that an increase in concentration caused by the merger would be ameliorated by new entry into the Spanish-language broadcasting market.<sup>2</sup> Such theoretical

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<sup>1</sup> See generally Letter from Philip L. Verveer, *et al.*, Counsel to Spanish Broadcasting System, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 02-235, at 1-2 (July 14, 2003) (summarizing almost a dozen of SBS’s most recent filings) (“SBS July 14 Letter”).

<sup>2</sup> See Letter from Scott R. Flick, Counsel to Univision Communications, Inc., and Roy R. Russo, Counsel to Hispanic Broadcasting Corporation, to Michael K. Powell, Chairman, FCC, MB Docket No. 02-235, at 4-5 (May 14, 2003) (“Univision May 14 Letter”).

entry into radio<sup>3</sup> could only be achieved in one of two ways: either by obtaining new radio spectrum licenses from the Commission or by purchasing an existing English-language facility and converting it to Spanish-language programming. With respect to the former, the Commission recently recognized that such entry is all but foreclosed: “barriers to entry [in the radio business] are high because virtually all available radio spectrum has been licensed” making it a “closed entry market.”<sup>4</sup> With respect to the latter, the data presented below make clear that the barriers to entry into the Spanish-language broadcasting market by converting an English-language radio station in any of the top 10 markets where Hispanics reside are extremely high.

The implications of these high entry barriers should not be underestimated. The Commission has recently recognized that radio has advantages over other media types in its ability to reach certain demographic groups, particularly unserved and underserved groups.<sup>5</sup> Because of this unique outreach ability, and the relatively low costs involved in entering the radio business (in comparison to other types of media), radio is the likeliest venue for new entrants into the Spanish-language broadcasting market.<sup>6</sup> However, as the Commission well knows, “in a concentrated market, dominant radio station groups can exercise market power to attract revenue at the expense of the small owner. As a result, the small owner has greater difficulty obtaining revenue it needs to develop and broadcast attractive programming and to compete generally against the dominant station groups.”<sup>7</sup> Were the Commission to approve this proposed merger, this outcome would be all but assured in the Spanish-language broadcasting market.

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<sup>3</sup> It is important to note that the Department of Justice’s Merger Guidelines only consider whether entry will be sufficient to cure a merger’s competitive problems when it is “committed” entry. That is, whether the potential entry will be timely, likely, and sufficient. See U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, 57 F.R. 41552, § 3.0 (1992, rev’d Apr. 8, 1997). Nothing in Univision’s filings even approaches this minimum standard for easing concerns about the concentration of the Spanish-language broadcast market.

<sup>4</sup> *2002 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Cross-Ownership of Broadcast Stations and Newspapers, Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets, Definition of Radio Markets, Definition of Radio Markets for Areas in an Arbitron Survey Area*, MB Dkt. No. 02-277; MM Dkt. Nos. 01-235; 01-317; 00-244; and 03-130, Report and Order and Notice of Proposed Rulemaking, FCC 03-127, ¶ 288 (rel. July 2, 2003).

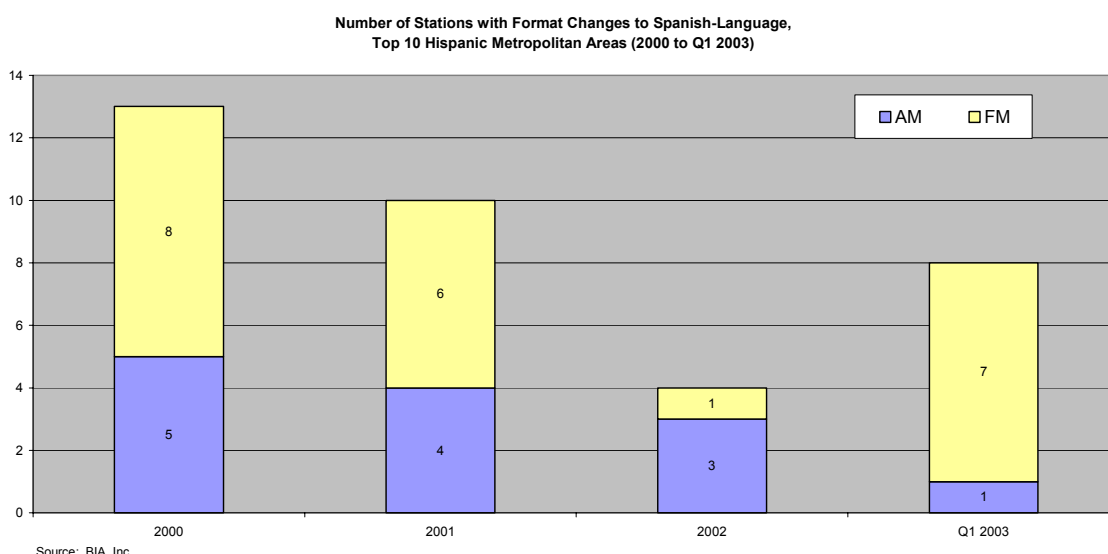
<sup>5</sup> See *id.* ¶ 306.

<sup>6</sup> See *id.* ¶ 288.

<sup>7</sup> *Id.* ¶ 299 (citations omitted).

### Spanish-Language “Format” Changes In The Top 10 Hispanic Metropolitan Areas.<sup>8</sup>

As an initial matter, SBS has previously demonstrated that, as a matter of fact and long-standing Commission policy, Spanish-language broadcasting is not “merely another programming format,”<sup>9</sup> and therefore presumably beneath the Commission’s notice, according to the Applicants.<sup>10</sup> Nonetheless, as explained above, entry into Spanish-language radio can only occur through the conversion of a broadcast radio station’s programming to Spanish-language—broadly referred to as a “format” change. The low incidence of such conversions is indicative of the high entry barriers to the Spanish-language broadcasting market. The figure below presents the total number of conversions to Spanish-language broadcasting in the top 10 Hispanic markets, for AM and FM stations, over the last 39 months (including the first quarter of this year, the most recent quarter for which data are available).



Contrary to Univision’s suggestion that English-language stations can “readily” enter the Spanish-language broadcasting market by simply converting to a Spanish-language “format,”

<sup>8</sup> The methodology used to calculate the following data is summarized in the attached Appendix.

<sup>9</sup> Univision May 14 Letter at 5.

<sup>10</sup> See generally Letter from Philip L. Verveer, *et al.*, Counsel to Spanish Broadcasting System, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 02-235 (June 26, 2003) (explaining that “foreign-language broadcasting cannot be said to be a mere ‘format’ in the same sense as ‘classical music’ or ‘progressive rock’ entertainment programming.” To conflate entertainment formats and differences in language is so profound a confusion as to constitute a category mistake.).

citing as evidence that 99 stations changed from English-language to Spanish-language between 2001 and 2002,<sup>11</sup> the data show that over a period more than three times as long there were only 35 Spanish-language “format” changes in those markets where most Hispanics live. The data are entirely consistent with the Lehman Brothers analysis submitted into the record by SBS on June 23, 2003.<sup>12</sup> Notably, “[d]espite those seemingly strong prospects, general market operators have not meaningfully shifted their portfolios into the Spanish-language format.”<sup>13</sup>

For each of the top 10 Hispanic metropolitan areas (Los Angeles, New York, Miami, Chicago, Houston, San Francisco/San Jose, Dallas/Ft. Worth, San Antonio, Phoenix, and Brownsville/McAllen), Table 1, below, presents the total number of changes (including and excluding religious formats) as well as the companies that undertook these changes.

Table 1: Number of Changes to Spanish-Language, 2000 through Q1 2003

Metropolitan Area (Hispanic population, in mil)	Total Number of Changes	Excluding Religious Formats	
		Number of Changes	Owners That Undertook Change
Los Angeles (7.0)	7	6	HBC (2); Liberman (1); SBS (3)
Houston (1.6)	8	5	Liberman (5)
Phoenix (1.0)	5	5	<i>Big City Radio</i> * (1); Entravision (1); HBC (3)
Chicago (1.6)	4	4	<i>Big City Radio</i> * (1); SBS (3)
Dallas/Ft. Worth (1.3)	4	2	Amigo Broadcasting LP (1); M&M Broadcasters Ltd (1)
Brownsville/McAllen (1.0)	2	2	Entravision (1); Radio Unica (1)
Miami (1.7)	2	1	New World Broadcasting (1)
San Antonio (1.2)	2	1	HBC (1)
San Francisco/San Jose (1.4)	1	1	HBC (1)
New York (4.0)	0	0	
<b>Total</b>	<b>35</b>	<b>27</b>	

\* As of January 2003, Big City Radio no longer offers Spanish-language radio programming. Both stations for which it initiated format changes are now operated by HBC.

Source: BIA, Inc.

The numbers, however, do not tell the entire story. A closer review of commercial entry over the last three-plus years shows that new entry into Spanish-language radio was almost entirely accomplished by just four entities, and is dominated by companies involved in the application to merge.

The Los Angeles area experienced the largest number of Spanish-language station changes. Two out of the six non-religious “format” changes in Los Angeles are attributable to

<sup>11</sup> See Univision May 14 Letter at 4-5.

<sup>12</sup> See generally Letter from Philip L. Verveer, *et al.*, Counsel to Spanish Broadcasting System, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket No. 02-235 (June 23, 2003) (attaching a Lehman Brothers Equity Research Report, June 11, 2003).

<sup>13</sup> *Id.* at Attachment, p.1.

HBC; three are attributable to SBS; and one is attributable to Liberman Broadcasting.<sup>14</sup> New York, the second largest Hispanic metropolitan area, experienced no “format” changes and, thus, no entry into Spanish-language radio. Miami, the third largest Hispanic metropolitan area, experienced a single “format” change during this period, by New World Broadcasting. In three of the remaining top 10 metropolitan areas (Phoenix, San Antonio, and San Francisco/San Jose), format changes are attributable almost exclusively to HBC and Entravision.<sup>15</sup>

Table 2, below, presents a summary of the station format changes by the owner that undertook them. Nine of the 27 non-religious station format changes over this period were undertaken by HBC and Entravision (in which Univision would continue to hold an economic interest) that together account for nearly 60 percent of all broadcast radio advertising revenues in the top ten Hispanic metropolitan areas. SBS and Liberman Broadcasting each account for 6 of the 27 format changes.

Other radio station owners that undertook changes include Big City Radio, Radio Unica, Amigo Broadcasting LP, M&M Broadcasters Ltd, Multicultural Radio Broadcasting, and New World Broadcasting. Of these six owners, one, Big City Radio, is no longer a Spanish-language radio provider. It has liquidated all of its radio stations, but for one (WYXX – 103.1 FM, Chicago) that no longer broadcasts in Spanish. The two stations it converted to Spanish-language since January 1, 2000, have been acquired by HBC. Another, Radio Unica, the fifth largest Spanish-language radio broadcaster in terms of revenue, is financially unstable. It has received Dun & Bradstreet’s lowest financial rating of “unbalanced.”<sup>16</sup> Multicultural Radio Broadcasting, Inc., with 35 stations, transmits programming in over 22 separate languages, of

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<sup>14</sup> The analysis excludes religious broadcasters because the motivation for entry and the funding of entry of these stations is not typically commercial. This distinction is very important if the government were to seek to rely upon likelihood of entry to restore diversity and to otherwise protect the public interest. As SBS has pointed out, received wisdom permits an inference of entry in response to economic stimuli, *ceteris paribus*, but it does not provide any basis for predicting entry, let alone successful entry, in response to theological, ideological, or other similar stimuli. See SBS July 14 Letter at 9 (reliance upon new entry to offset the likely anticompetitive effects of the proposed merger using antitrust learning says little “about overcoming the loss of diversity”).

<sup>15</sup> Notably, this analysis does not make any qualitative judgments about the stations in question. It does not consider the power of those stations that changed to Spanish-language, nor the their audience size. While the analysis treats every change equally, to truly determine the significance of any of these changes, one would have to conduct a more detailed inquiry.

<sup>16</sup> See also SBS July 14 Letter, Attachment ¶ 15 (Declaration of Alan Sokol) (noting that the “two most significant efforts to create new Spanish radio groups in recent history, Big City Radio and Radio Unica, have failed or are in a very tenuous financial position, respectively.”).

which four of the five full-time Spanish-language stations employ a religious format.<sup>17</sup> Finally, Amigo Broadcasting LP, M&M Broadcasters Ltd, and New World Broadcasting are small owners that together account for no more than 0.1 percent of top 10 Hispanic metropolitan area radio advertising revenues.

Table 2 – Station Format Changes by Owner

Owner That Undertook Change	Number of Station Changes		Total # of Stations Owned*	Top 10 Hispanic Metropolitan Areas	
	Total	Total Excluding Religious Formats		Revenue Share	Rank (out of 31)
Hispanic Broadcasting Corporation	7	7	70	47%	1
Spanish Broadcasting System	6	6	27	23%	2
Liberman Broadcasting	6	6	15	8%	4
Entravision Communications	2	2	57	10%	3
Big City Radio	2	2	1	0.05%	25
Radio Unica	2	1	15	6%	5
Amigo Broadcasting LP	1	1	16	0.07%	22
M&M Broadcasters Ltd	1	1	3		
New World Broadcasting	1	1	1		
Multicultural Radio Broadcasting	2	0	35	2%	7
SIGA Broadcasting	1	0	4	0.13%	15
Aleluya Christian Broadcasting	1	0	2		
Hi-Favor Broadcasting	1	0	4		
Houston Christian Broadcasters	1	0	10		
Mortenson Broadcasting Company	1	0	13		
<b>Total</b>	<b>35</b>	<b>27</b>			

\* Stations counts include 4 HBC stations and 11 SBS stations that broadcast in Spanish out of Puerto Rico.

Source: BIA, Inc.

This pattern makes very clear that only four large incumbent radio owners have been able to successfully convert a commercial radio station's programming to Spanish-language. As a result, there is no basis for believing that actual or potential entry would overcome the market dominance that the proposed merger would exacerbate. If the merger is approved, the biggest of the four disappears into Univision, while Univision will continue to have an economic interest in Entravision, the third largest of the four, not to mention the extensive economic ties as a result of its status as provider of programming to Entravision's TV stations and as sales agent for the national and regional advertising placed on Entravision's TV stations. As Table 3, below, indicates, HBC's and Entravision's Spanish-language radio stations overlap in thirteen markets.

<sup>17</sup> See <http://www.mrbi.net/>.

Table 3 – HBC and Entravision Stations By Metropolitan Area

**Total Metro Areas: 29****Overlap Areas: 13**

Metropolitan Area	Hispanic Metro Rank	Total HBC/Entravision Stations	Spanish-Language Broadcasting	
			HBC	Entravision
Los Angeles, CA	1	9	5	2
New York, NY	2	2	2	
Miami, FL	3	5	4	1
Chicago, IL	4	8	4	2
Houston, TX	5	9	8	
San Francisco/San Jose, CA	6	5	2	2
Dallas/Ft. Worth, TX	7	11	6	4
San Antonio, TX	8	7	5	
Phoenix, AZ	9	8	5	3
Brownsville/McAllen, TX	10	7	2	2
San Diego, CA	11	3	2	1
Fresno, CA	12	2	1	1
Sacramento, CA	13	3		2
El Paso, TX	14	7	3	2
Albuquerque, NM	15	7	2	2
Denver/Boulder, CO	16	3		3
Austin, TX	19	1	1	
Las Vegas, NV	24	5	3	2
Tucson, AZ	25	1		1
Monterey/Salinas/Santa Cruz, CA	27	4	1	3
Palm Springs, CA	32	1		1
Waco, TX	43	1	1	
Lubbock, TX	45	1		1
Puerto Rico	na	4	4	
Modesto, CA		2		2
Stockton, CA		2		2
Flagstaff/Prescott, AZ		1		1
Oxnard/Ventura, CA		1		1
Reno, NV		1		1

*Notes:* There are six stations (2 HBC, 4 Entravision) excluded from this analysis because BIA does not report market name. Metropolitan area rank based upon the top 50 U.S. metropolitan areas by Hispanic population. Data current as of July 11, 2003.

*Sources:* BIA, Inc.; 2002 *Hispanic Market*, Strategy Research Corporation; miscellaneous websites.

After SBS, and to a much more limited extent, Liberman Broadcasting,<sup>18</sup> there is no one else out there, as the Lehman Brothers Report indicates, and as the failure of Big City and the serious financial problems of Radio Unica also indicate. Experts would not typically deem this situation as one ripe for entry:

Analysis of the likelihood of entry . . . asks whether an entry plan would be profitable to carry out. This is an important question because entry matters to merger analysis only if it likely would cure

<sup>18</sup> Liberman Broadcasting only has radio broadcasting operations in Los Angeles and Houston. See LBI Media, Inc., SEC Form 10-Q Quarterly Report for the quarter ended Mar. 31, 2003 (filed May 15, 2003).

the competitive problem arising from an acquisition. An entry plan that would not be profitable for a prospective competitor to execute in the post merger environment will not help deter or counteract anticompetitive conduct, even if it is technically feasible. In shorthand slogan, the [Merger] Guidelines pick “would” over “could.” They care about whether a firm would enter, not merely whether it could enter.<sup>19</sup>

As already explained by SBS for the record of this proceeding, the DOJ has pursued antitrust enforcement actions in the context of radio mergers on the basis, *inter alia*, that changing formats is very risky and expensive for radio stations and that entry is, therefore, unlikely to deter the anticompetitive consequences of a transaction.<sup>20</sup>

To be blunt, if the proposed merger were approved there would be exactly two wholly independent, financially stable group owners of material size with experience in and resources dedicated to Spanish-language radio on which the Commission and our society would be relying for entry. The record in this proceeding makes two points crystal clear. First, the merger will create a Spanish-language broadcasting colossus unrivaled by anything in English-language broadcasting, both in terms of advertising revenue and potential political, social, and cultural influence. Second, expecting new entry to somehow trump the merged entity’s ability to engage in undesirable conduct is futile. What is more likely to result from this merger is an entity with the ability to 1) refuse to deal with, or discriminate against, Spanish-language radio competitors who seek to advertise through Univision in order to advantage HBC; 2) harm its existing television competitor, Telemundo, by denying carriage of Telemundo’s radio ads or raising the price of such ads; and 3) insist that Spanish-language advertisers who wish to advertise through both radio and television purchase time from both Univision and HBC rather than from the merged firm’s rivals, including SBS.

What the combined entity would do with its ability to affect political, social, and cultural awareness and attitudes is unknown. Of course, from the perspective of the Commission’s statutory obligations, it need not be known. What the Communications Act’s values of competition and diversity compel is that the Commission not authorize mergers that enable a single firm to exercise this degree of influence. In its 1999 affirmation of the importance of diversity in local broadcast markets, the Commission noted that “[m]onopolization of the means of mass communication in a locality assure the monopolist control of information received by the public and based upon which it makes elective, economic and other choices.”<sup>21</sup> Thus, the

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<sup>19</sup> Jonathan B. Baker, *The Problem with Baker Hughes and Syufy: On the Role of Entry in Merger Analysis*, 65 Antitrust L. J. 353, 363 (1997) (emphasis added).

<sup>20</sup> See SBS July 14 Letter at 3-4, 6-7.

<sup>21</sup> *Review of the Commission’s Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules, Report and Order*, 14 FCC Rcd 12903, ¶ 19 (1999).



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“wellspring” of the radio/television cross-ownership rule is the principle that “[b]asic to our form of government is the belief that ‘the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public.’”<sup>22</sup> The Commission cannot approve the proposed merger without doing violence to these principles.

Respectfully submitted,

*/s/ Philip L. Verveer*

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<sup>22</sup> *Amendment of Sections 73.35, 73.240, and 73.636 of the Commission’s Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations, First Report and Order*, 22 FCC 2d 306, ¶¶ 16-17 (1970) (citing *Associated Press v. U.S.*, 326 U.S. 1, 20 (1945)).

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## APPENDIX

### Data and Methodology

Radio station format, station ownership, and advertising revenue data were obtained from BIA, Inc., a widely utilized industry data source, through its *Media Access Pro* software.<sup>1</sup> These data were supplemented with information from *2002 U.S. Hispanic Market* (a publication of Strategy Research Corporation), various internet websites, including [www.100000watts.com](http://www.100000watts.com), and telephone conversations with individual radio station personnel.

The analysis began by identifying radio stations broadcasting to the ten metropolitan areas with the largest Hispanic populations. Of these stations, the Spanish-language radio stations as of the first quarter of 2003 were identified. A station is classified as Spanish-language if a portion of the station's BIA format description is Spanish or, alternatively, if it can be determine that a portion of the station's programming is in Spanish.

For each station that was in Spanish, whether a station changed its programming from a non Spanish-language format to a Spanish-language format was determined by identifying changes in Arbitron's quarterly format data for each station ending in quarter 1 2003, as reported by BIA.<sup>2</sup> For example, a change to Spanish-language format between Fall 2000 and Winter 2001 is recorded as a station format change in 2001. In certain instances (for example, where the first available quarter of data for a station begins with a description of Spanish-language programming), calls were made to the radio station to determine whether the station had in fact "switched" from some other language to Spanish.

For each station, ownership was identified using owner and parent information provided by BIA. Radio advertising revenue shares across the top ten Hispanic metropolitan areas was also calculated and submitted to the Commission previously.<sup>3</sup>

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<sup>1</sup> These data (except for revenue shares and rank) are current as of July 11, 2003. Revenue data are current as of June 5, 2003. According to the Director of Research at BIA, BIA reports estimated revenues for all Arbitron-rated stations in the metropolitan area.

<sup>2</sup> Station format changes can be categorized as: internal decision by an existing radio provider; purchase by an existing radio provider; or *de novo* entry.

<sup>3</sup> See Letter from Philip L. Verveer, *et al.*, Counsel to Spanish Broadcasting System, Inc., to Marlene H. Dortch, Secretary, FCC, MB Docket 02-235 (June 11, 2003).